

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 6, 2001

1:14 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair
Representative Ethan Berkowitz

COMMITTEE CALENDAR

HOUSE BILL NO. 143

"An Act relating to the deoxyribonucleic acid (DNA) identification registration system."

- MOVED CSHB 143(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 121

"An Act relating to the issuance of qualified charitable gift annuities."

- MOVED CSHB 121(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 125

"An Act relating to unlawful and indecent viewing and photography and to civil damages and penalties for that viewing and photography."

- HEARD AND HELD

HOUSE BILL NO. 196

"An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure."

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 120

"An Act adopting the National Crime Prevention and Privacy Compact; making criminal justice information available to interested persons and criminal history record information available to the public; making certain conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 143

SHORT TITLE:DNA DATABASE

SPONSOR(S): REPRESENTATIVE(S)MURKOWSKI

Jrn-Date	Jrn-Page		Action
02/23/01	0415	(H)	READ THE FIRST TIME - REFERRALS
02/23/01	0415	(H)	JUD
02/28/01	0473	(H)	COSPONSOR(S): DYSON
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 121

SHORT TITLE:CHARITABLE GIFT ANNUITIES

SPONSOR(S): REPRESENTATIVE(S)MURKOWSKI

Jrn-Date	Jrn-Page		Action
02/09/01	0281	(H)	READ THE FIRST TIME - REFERRALS
02/09/01	0281	(H)	L&C, JUD
02/14/01	0328	(H)	COSPONSOR(S): STEVENS
03/14/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/14/01		(H)	Moved CSHB 121(L&C) Out of Committee MINUTE(L&C)
03/26/01	0724	(H)	L&C RPT CS(L&C) 5DP 2NR
03/26/01	0725	(H)	DP: KOTT, HAYES, MEYER, ROKEBERG,
03/26/01	0725	(H)	MURKOWSKI; NR: HALCRO, CRAWFORD
03/26/01	0725	(H)	FN1: ZERO(CED)
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 125

SHORT TITLE:UNLAWFUL VIEWING

SPONSOR(S): REPRESENTATIVE(S)KOTT

Jrn-Date	Jrn-Page		Action
----------	----------	--	--------

02/12/01	0297	(H)	READ THE FIRST TIME - REFERRALS
02/12/01	0297	(H)	JUD, FIN
02/12/01	0297	(H)	REFERRED TO JUDICIARY
02/26/01	0444	(H)	COSPONSOR(S): DYSON
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 196

SHORT TITLE: RIGHT OF ACTION FOR LEGAL SEPARATION

SPONSOR(S): REPRESENTATIVE(S) DYSON

Jrn-Date	Jrn-Page		Action
03/19/01	0649	(H)	READ THE FIRST TIME - REFERRALS
03/19/01	0649	(H)	JUD
03/19/01	0649	(H)	REFERRED TO JUDICIARY
04/06/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE LISA MURKOWSKI

Alaska State Legislature
Capitol Building, Room 408
Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HB 143 and HB 121.

GEORGE TAFT, Director
Scientific Crime Detection Laboratory
Department of Public Safety
5500 East Tudor Road
Anchorage, Alaska 99507-1221

POSITION STATEMENT: Testified that the state crime lab has the latest DNA technology available and is prepared to handle the increased workload from HB 143.

MARK MEW, Deputy Chief
Anchorage Police Department (APD)
Municipality of Anchorage
PO Box 196650
Anchorage, Alaska 99519

POSITION STATEMENT: Expressed the APD's enthusiasm for HB 143 and answered questions.

JOHN McKINNON, Officer
Anchorage Police Department
Municipality of Anchorage
PO Box 196650

Anchorage, Alaska 99519

POSITION STATEMENT: Testified that HB 143 balances the preservation of public safety and liberty.

JENNIFER RUDINGER, Executive Director

Alaska Civil Liberties Union (AkCLU)

PO Box 201844

Anchorage, Alaska 99520-1844

POSITION STATEMENT: Stated support for voluntary collection of DNA and acknowledged reasons to collect DNA for sex offenses, but expressed concerns about HB 143, relating her testimony to SB 99 as well; requested amendment so that samples are destroyed once the information is in the database. During discussion of HB 125, expressed concerns regarding free speech, the First Amendment, and the expanded definition of "picture."

DEL SMITH, Deputy Commissioner

Department of Public Safety

PO Box 111200

Juneau, Alaska 99811-1200

POSITION STATEMENT: Testified in support of the proposed committee substitute for HB 143 and answered questions.

ROBERT BUTTCANE, Legislative & Administrative Liaison

Division of Juvenile Justice

Department of Health & Social Services

PO Box 110635

Juneau, Alaska 99811-0635

POSITION STATEMENT: Testified in support of HB 143; said there would be no programmatic or fiscal impact on the current system. During discussion of HB 125, expressed concerns and answered questions.

JEROME SELBY

Providence Health System in Alaska

9100 Centennial

Anchorage, Alaska 99504

POSITION STATEMENT: Testified on HB 121.

JON CALDER, Director

Annual & Planned Giving

Providence Alaska Foundation

3200 Providence Drive

Anchorage, Alaska 99508

POSITION STATEMENT: Testified on HB 121.

GLORIA GLOVER, Chief Financial Examiner

Anchorage Field Office
Division of Insurance
Department of Community & Economic Development
3601 C Street, Suite 1324
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in support of CSHB 121(L&C).

DENISE HENDERSON, Staff
to Representative Pete Kott
Alaska State Legislature
Capitol Building, Room 204
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 125 on behalf of
Representative Kott, the sponsor.

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers (AST)
Department of Public Safety (DPS)
5700 East Tudor Road
Anchorage, Alaska 99507
POSITION STATEMENT: Answered questions relating to HB 125.

JERRY LUCKHAUPT, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
Terry Miller Building, Room 329
Juneau, Alaska 99801-1182
POSITION STATEMENT: Speaking as the drafter, answered questions
on HB 125.

ACTION NARRATIVE

TAPE 01-57, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing
Committee meeting to order at 1:14 p.m. Members present at the
call to order were Representatives Rokeberg, James, Coghill, and
Meyer. Representative Kookesh arrived as the meeting was in
progress.

HB 143 - DNA DATABASE

[Contains testimony relating to SB 99.]

Number 0239

CHAIR ROKEBERG announced the first order of business, HOUSE BILL NO. 143, "An Act relating to the deoxyribonucleic acid (DNA) identification registration system." [In packets was a proposed committee substitute (CS), version 22-LS0234\F, Luckhaupt, 3/14/01.]

Number 0250

REPRESENTATIVE LISA MURKOWSKI, Alaska State Legislature, sponsor, explained that HB 143 is similar to legislation from the previous session; however, the previous bill didn't include burglary in the list of offenses for which samples would be collected. Currently under statute the state can collect DNA samples from those convicted of crimes against a person: assault, rape, kidnapping, murder, child sexual abuse, robbery, stalking, indecent exposure, extortion, coercion, and first-degree arson. What HB 143 does is add burglary to the list.

REPRESENTATIVE MURKOWSKI told members they probably would hear arguments regarding the numbers; however, statistics she has seen prove that 50 percent of those who commit burglary - a so-called crime of convenience - later commit violent crimes. If the state can get [DNA] identification from those committing burglary, the belief is that it will help to identify, solve, or prevent certain violent crimes.

REPRESENTATIVE MURKOWSKI informed members that George Taft, director of the state crime lab, was online to testify that day. She encouraged members to tour the lab facilities to see how they operate and input the data. She told members that Deputy Commissioner Smith from the Department of Public Safety (DPS) would address the process as well.

CHAIR ROKEBERG noted the arrival of Representative Kookesh. Referring to a chart in committee packets that shows the DNA database laws from all 50 states in relationship to various felonies, he observed that burglary is the only such offense not included for Alaska currently.

REPRESENTATIVE MURKOWSKI affirmed that, adding that other charts, not included in packets, show how various states are dealing with the expansion to their DNA databases. She reported that all states require DNA samples for sex offenses; 35 states, including Alaska, require samples for murder and for assault and battery; and 24 require samples for burglary. The inclusion of

burglary in the list of violent crimes is something that more and more states are looking at.

CHAIR ROKEBERG pointed out that the chart in packets says 18 states [include burglary, rather than the 24 mentioned].

REPRESENTATIVE MURKOWSKI explained that the chart is from June 2000; it is an older listing.

CHAIR ROKEBERG commented that it clearly shows a trend of other states' adopting the standard being requested [in HB 143].

Number 0628

GEORGE TAFT, Director, Scientific Crime Detection Laboratory, Department of Public Safety, testified via teleconference. He informed members that the laboratory is prepared to handle the workload, should HB 143 pass. He pointed out that the figure of 24 states [with burglary on the inclusion list] has recently increased to 26 states. Mr. Taft reported that the laboratory is performing the latest DNA testing available, called "STR" for "short tandem repeat," a highly specific and accurate process that can identify individuals with one-in-a-billion [accuracy].

Number 0738

MARK MEW, Deputy Chief, Anchorage Police Department (APD), Municipality of Anchorage, testified via teleconference, noting that with him was Officer John McKinnon, the "point man" on the project. He informed members that the APD is "very enthusiastic" about HB 143; the APD was also enthusiastic about the previous legislation, he said, and wanted burglary [included] at that time, as well.

DEPUTY CHIEF MEW explained that his department has an interest in generating as large a database of criminals as possible, and sees a direct relationship between burglary and other crimes. He pointed out that different statistics exist from using different methodologies, but all correlate burglary with other crimes; in particular, he said, he was thinking of sexual assaults. The APD believes that including burglars in the DNA database will assist the department to stop serial criminals early in their careers, he told members, thereby saving the taxpayers money and shortening investigation time.

REPRESENTATIVE JAMES asked what the APD's calculated percentage is for burglars who go on to commit other crimes.

DEPUTY CHIEF MEW replied that he is aware of three different numbers from three [sources]. First, he has been told that in Florida the figure is somewhere around 25 percent. Second, he is aware of an FBI [Federal Bureau of Investigation] study that used a different methodology, interviewing serial rapists, and came up with a figure closer to 50 percent for people who had committed property crimes - specifically, burglary - beforehand.

DEPUTY CHIEF MEW said third, "we" made some effort to calculate the same statistics in Alaska, and the number was "quite a bit lower than that," presumably because juvenile records are kept separately from adult records, and thus juvenile burglary convictions were not being picked up as they related to violent crimes committed by the same juveniles after they became adults; [the APD] is working now with the [Division of] Juvenile Justice to backtrack regarding some of those names. Right now, he noted, that statistic is lower than 50 percent, which he suggested Deputy Commissioner Smith could speak to. He added that he thinks 25 percent is probably [a reasonable estimate] in terms of rapists who have prior burglary convictions.

Number 0963

REPRESENTATIVE JAMES mentioned her own accounting background, saying she was having difficulty establishing that percentage if one is figuring out how many [perpetrators of violent crimes] started as burglars, as opposed to figuring out how many violent criminals have done burglaries. She suggested that the two answers wouldn't necessarily be the same.

DEPUTY CHIEF MEW replied that in order to make it work, the individuals, not the number of crimes, must be counted. There are many burglaries for which the perpetrator is unknown. Therefore, the criminal histories of the people who have been convicted of the violent crimes must be tracked backward through time to see how many had convictions for burglaries. He emphasized that these statistics are for convictions, rather than for a charge of burglary that is pled down to vandalism, for example.

DEPUTY CHIEF MEW explained that part of the difficulty in comparing one state's statistics to another's is because the methodology and the statutory definitions of the crimes may differ, widely affecting the results of a study. "We're trying to come up with an apples-to-apples comparison right now," he added, "but our data isn't coming in as fast as you guys are

holding hearings, so I can't nail down a number for you; I apologize for that."

REPRESENTATIVE JAMES said she can understand the difficulty in analyzing it because one can only analyze backward in time, whereas the legislation projects forward in time, using that assumption.

Number 1109

REPRESENTATIVE MEYER noted that his own question was similar to that of Representative James. He referred to a handout provided by Representative Murkowski regarding a study done in Virginia which showed that 40 percent of the men who were ultimately arrested for rape began their criminal careers with property crimes such as burglar and petty theft. He asked how this would "track" in Alaska.

DEPUTY CHIEF MEW noted that the FBI [study] said 50 percent had done property crimes including those such as burglary; he cautioned that "property crimes" includes more than just burglary. He concluded, "I think that we're the same as all the other states. I'm just unable right now to prove it to you with the hard [numbers]."

CHAIR ROKEBERG remarked that one benefit of having [DNA] evidence available is that it can help a potential defendant who is innocent of the crime, just as it can convict [someone who is guilty].

DEPUTY CHIEF MEW concurred, pointing out that some people have been released from prison after serving lengthy sentences because [of being exonerated] by DNA technology. He called it an objective test.

CHAIR ROKEBERG asked whether the APD has found it helps in investigations.

DEPUTY CHIEF MEW replied that [the APD] uses DNA "all the time"; it is particularly valuable in sexual assault cases. He explained that [DNA] is good physical evidence that can "break" an alibi or help get a confession. In sexual assault, it used to be a matter of proving whether or not sex occurred to begin with; now, however, it is usually a matter of just proving whether it was "successful" because the first part of the argument is pretty much settled by the DNA. It also helps in homicides and even in burglary cases when a burglar gets cut by

glass and leaves blood behind [at the scene]. Deputy Chief Mew commented that there may be serial burglars who haven't graduated to other crimes in the database today, "and two years from now they'll leave blood behind at the scene, and we may close up even our own burglary cases [using this] technology."

Number 1260

REPRESENTATIVE COGHILL returned to Deputy Chief Mew's caution that [different crimes] may have different standards and definitions in other states' statutes. Representative Coghill remarked that there is a "privacy wall" that must be protected in order to avoid misusing this information. He said right now, he doesn't have any fear that the state itself or the current generation will misuse it; he expressed concern, however, that future generations will have a lot of information available. He asked whether, right now, there could be people who are inadvertently "caught up" because of the definition of burglary [in HB 143] - people who will have DNA samples collected but who really shouldn't be in that [database].

DEPUTY CHIEF MEW answered:

Our definition of burglary here, I think, is fairly consistent with traditional burglary definitions: ... you have to enter or remain illegally with the intent to commit a crime. It's much higher than just vandalizing something or just stealing something. It's not stealing hubcaps off a car. It's not shoplifting out of a store that's open to the public. It's a fairly high level of crime

And if you're charged with burglary, but ... to avoid the necessities of trial the [district attorney] allows you to plead guilty to something lesser such as trespass or theft or vandalism, we're not going to be collecting a sample under this law. You have to have the conviction for burglary, not the charge. Unless the legislature wants to change that down the road, that's what we're asking for, and that's what we'll be held to - and it's a fairly high standard.

DEPUTY CHIEF MEW, in further response to Representative Coghill, pointed out that if the standard were a charge of burglary, rather than a conviction, the bill would be "catching" many people. Requiring a conviction not only narrows the number of people, but also raises the burden of proof.

Number 1392

JOHN McKINNON, Officer, Anchorage Police Department, Municipality of Anchorage, testified via teleconference. He noted that "law enforcement is tasked with balancing many public issues" including balancing public safety with "liberty for all." He suggested that some opponents of this bill, by contrast, may have the task of [protecting] only one area, such as liberty. He said HB 143 meets both of these challenges: it enhances the ability of law enforcement to promote and preserve public safety while enhancing and furthering leads in criminal investigation. In addition, HB 143 will [protect] people from false convictions when they are innocent of a crime.

OFFICER McKINNON reported that according to at least one study, conducted by the National Institute of Justice, violent crimes such as sexual assault are the most expensive for society; considering all the factors of medical and mental care, loss of productivity, and decreased quality of life, [the study] estimated the average cost of one crime to be nearly \$87,000. Officer McKinnon told members that with the enactment of HB 143, having a suspect's DNA in the registry possibly could lessen the damage to individual citizens and reduce the cost to government.

Number 1491

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), testified via teleconference, noting that the AkCLU is a statewide organization whose mission is to defend and protect the guarantees of individual liberty found in the Bill of Rights and in Alaska's constitution. She said [the AkCLU] hears almost daily from people across the state who have various concerns about civil liberties; by far, the biggest categories of cases brought to her attention in her four years as director have been from people concerned about the government's demand for more and more personal information, whether that information regards genetics, social security [numbers], or personal backgrounds. She informed members that she would, therefore, focus on personal privacy in her testimony.

MS. RUDINGER said the AkCLU doesn't doubt that the sponsors of both SB 99 and HB 143 have good intentions, nor does the AkCLU question DNA's accuracy for identification or its value to exonerate the innocent; in fact, [the American Civil Liberties Union] is advocating, in states nationwide and at the federal level, that whenever someone is convicted of a crime that

carries the death penalty, DNA - if it existed at the crime scene - should be allowed for testing before the [convicted] person is executed. Therefore, the AkCLU wouldn't oppose voluntary collection of DNA. In fact, if someone is innocent, that person's lawyer should ask for a DNA test.

Number 1585

MS. RUDINGER pointed out that HB 143, by contrast, establishes mandatory collection of DNA. She stressed the importance of asking whether [this mandatory collection] is justified in Alaska. She said:

We're not talking about taking DNA from burglars in Florida or Virginia. We're talking about taking DNA from people in Alaska, and we started out with sex offenders, as did most or all states. With sex offenders, it's different, because sex offenders (a) typically leave DNA at the crime scene, and (b) tend to be recidivists; I think it's an 80 percent or a little more than 80 percent recidivist rate - repeat offenders.

So, then, it makes sense that if you take the DNA for someone convicted of [a] sex offense, ... first of all, you'll be able to identify them and convict them, and down the road, if they're 80 percent likely to be a repeat offender, ... law enforcement is more likely to nab them. ... That seems to be justified. And we were told, ... by the federal government when they started this and by the states, ... "Well, ... here's the justification with sex offenses." And whether we completely agreed or not, we bought in to the argument that it was justified.

Then the line moves. And the line keeps moving. And so we have seen DNA collection moving from sex offenses to all violent crimes, and in Alaska it is currently very broad: it's all personal crimes. And in other states it's gone into property crimes like burglary. And then you start getting into states who are taking it from anyone who's arrested for a crime - not convicted. And finally, there have been proposals by Rudy Giuliani [mayor of New York City] - and Janet Reno [former U.S. Attorney General] thought this might have some credibility - of taking DNA from newborns. The line keeps moving. And every time that you

consider moving that line, we respectfully urge the committee to ask yourselves whether it's justified.

Number 1672

MS. RUDINGER continued:

In Alaska, it's not 40 percent or 25 or 50 percent. ... The only data we have to go on says that only 6 percent of burglars - of the people from whom you are taking DNA - do go on to commit a violent crime later; ... that means 94 percent do not.

This isn't like a fingerprint. I think we also have to look at what we are seizing from a human being. DNA, unlike fingerprinting, reveals information beyond identification. It gives the government control over a great deal of personal, private information, not only about the person you get the DNA from - the sample source - but from everyone related to that person by blood, [including] information about some 4,000 genetic conditions and diseases, ethnicity, family relationships, family history. This is a kind of information that belongs to the person, not the government, and you've got to really question whether it's justified.

And beyond that, we're constantly finding new things that we can learn from DNA. Geneticists are already thinking that we might be able to detect sexual orientation, tendency for substance abuse, so-called criminal tendencies under the theory of the "aggression gene." ... It may sound Orwellian, but it's true, and it's constantly developing.

MS. RUDINGER noted that confusion arises because two different kinds of data are taken from the DNA. The first, which looks like a barcode, is what is entered into the national database, CODIS [Combined DNA Index System].

MS. RUDINGER explained that the 13 specific genetic markers taken from the DNA chain, which are put into CODIS, are like a genetic fingerprint; with today's technology, the only information one can get from that "barcode" in the database is identification and maybe gender. However, the AkCLU and Alaskans are largely concerned about the other set of data - the

drop of blood or saliva itself - because nothing in federal or Alaskan law requires that the sample be destroyed.

MS. RUDINGER noted that she had provided additional written testimony. She concluded by requesting that the sponsor consider amending HB 143 so that once testing is completed and the data is entered into the database - which is 99.9 percent accurate - then the drop of blood, drop of saliva, hair, or tissue would be gotten rid of. It is the information in those samples that potentially invades a person's privacy, she explained.

Number 1868

REPRESENTATIVE JAMES, observing that the percentages offered by Ms. Rudinger were considerably different from those mentioned in earlier testimony, asked Ms. Rudinger where she obtained her information.

MS. RUDINGER replied that she had received her information from Senator Randy Phillips, who had said he'd obtained the information from [Deputy Commissioner] Smith; she suggested perhaps Mr. Smith could address that. Ms. Rudinger added that it is the best information that she has, and the only data that [the AkCLU] has right now to go on.

REPRESENTATIVE JAMES said she understands the position on liberties, but when she herself thinks about catching burglars, it protects her own liberty to be able to live safely in her home and on the streets. She suggested that is one of the most important aspects of liberty.

MS. RUDINGER concurred, but said the problem is that a person convicted of burglary is already going to do [jail] time. Now DNA will be taken. The argument is that taking DNA is supposed to help law enforcement track this person in the future, once the person is out of prison and back in society, under the theory that the person will commit another crime. However, if in Alaska it is known that 94 percent will not commit a future crime, she said it does little to give citizens peace of mind. She said it is simply part of a national movement, pushed by the FBI, to build a national database, that contains as many samples and [genetic] markers as possible.

CHAIR ROKEBERG noted that Ms. Rudinger's second page of written testimony says DNA also can prove the innocence of a suspect, thereby preventing terribly miscarriages of justice, and DNA can

even be used to correct wrongful convictions based on erroneous identification. "I take your point," he remarked.

Number 2010

DEL SMITH, Deputy Commissioner, Department of Public Safety (DPS), came forward to testify, noting that he had been before the [House Judiciary Standing] Committee regarding the previous legislation. He said he would address questions that had arisen that day.

MR. SMITH affirmed that the 6 percent that he had told Senator Phillips is an accurate number. Of the roughly 3,000 people from whom [DPS] has taken mandatory DNA samples since January 1, 1996, 6 percent had a previous burglary conviction. That information should be considered, but isn't scientific. "It does not mean, as far as I'm concerned, that 94 percent didn't," he stated. Mr. Smith explained:

These are convicted individuals. We've got a lot of unsolved burglaries out there; probably about 85 percent - in my experience, in my life in investigations - of burglaries never get solved. That being so, these are numbers that you probably should consider: 44 percent in Virginia is the number that I was told; 52 percent in Florida. Consider these, but I don't know that we ought to live or die on what the percentage is.

MR. SMITH pointed out that in Alaska, a substantial number of burglaries are committed by people under the age of 18, who do not end up, for the most part, with a criminal history against which the [DPS] can check the database; he suggested the officers from the APD could affirm that. He added, "We're trying to figure out a way to do that now, to come up with a better number, but [are] simply unable to do it right at the moment."

MR. SMITH reported that there was a case in the last couple of years in which, based on what [law enforcement] knew, probable cause would have brought the person in for a particularly bad crime in Anchorage. Based on the DNA sampling that [DPS] was able to do, however, the person was not arrested. Mr. Smith said, "That's the kind of thing I want to do. I do not want to submit somebody to arrest. ... If I can avoid that by having DNA that heads us off, and heads us in the right direction,

that's what I want to do. And as far as I'm concerned, that is guarding the freedom of the public."

MR. SMITH stated that he supports the bill, which he believes to be an important step forward. He emphasized that it is for convicted burglars. He noted that there was an APRN [Alaska Public Radio Network] program a few weeks ago from which he had obtained the tape and transcript. A person from Virginia had said, "If you don't want to do this, then you've probably given someone one free sexual assault." Mr. Smith said that is certainly a possibility. He suggested that many burglaries may be based on a tip on how to get into a person's house, for reasons that have little to do with taking money or guns.

REPRESENTATIVE JAMES asked Mr. Smith whether he thinks this will have any deterrent effect on young people.

MR. SMITH answered that he would like to think so, but he wasn't sure that such a thought process would enter into it. He suggested that people may be more careful regarding what they might leave at the crime scene.

CHAIR ROKEBERG indicated that was his own point: it could be a double-edged sword.

Number 2200

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice, Department of Health & Social Services (DHSS), came forward to testify in support of HB 143. He told members that there are approximately 600 burglary referrals to the juvenile system a year; of that number, approximately 200-300 are "adjudicated delinquent on burglary." He explained:

We don't adjudicate every child a burglar, because of various extenuating circumstances. ... A young person in a village may go into someone's home to get their jug of whiskey from underneath the sink; technically, that meets the qualifications or criteria for a burglary. But as you piece all of this together, what it really is more akin to, when you've got a 14- or 15-year old, is a criminal trespass. So we're much more likely, in those kinds of cases, to adjudicate the young person of a lesser serious offense.

That would be contrasted to the couple of teenagers who skip school one day and sit in their car at the

end of the cul-de-sac and watch people go off to work, go up to the door, ring the doorbell, get no response, and then bust the door in and then ransack the house and remove valuables and so on. That's a burglary in the first degree, and those are the type of things that we try to adjudicate, holding kids to a standard of conduct and expectation.

So when we adjudicate someone for a burglary in the first degree, it isn't just a simple thing. ... We're talking about young people who have ... committed the most serious of property offenses. It is a pretty bold and daring move to invade someone's residence, someone's castle, if you will. It is not an uncommon factor for kids to go into homes at night while the home is occupied. ... When I've talked to kids that have done that sort of thing, they get some sort of thrill out of doing this sort of thing with someone sitting there in bed. That's scary, to me. We're not talking about people who are innocent little jaywalkers. We're talking about people who have lost any of the reasonable sense about what is an appropriate social boundary.

So when we adjudicate a young person of a burglary, we are talking about finding someone having committed a real serious offense against the sanctity and the dignity of a person, their property, and the safety of the community. So we're talking about a class of offender that isn't like the rest of us. Taking a DNA sample from them is giving us an opportunity to have something on file that we can use later in terms of our public safety efforts and our ability to solve crimes and make sure that we hold offenders accountable.

Number 2317

I was concerned about the use of information. A few years ago, the legislature compelled us to share delinquency information with schools. And I was initially resistant to that because I was afraid that teachers and schools would misuse information about a kid's theft behaviors or assault behaviors - criminal behaviors.

But what I have found as we have shared information with schools is that they have used it appropriately. They hold kids accountable. And I've actually found that that was one of the best things that we did, in terms of opening up some of the delinquency system to let other people know what we're doing with these kids so that another set of eyes could hold those kids accountable to a standard of conduct that we all agree to.

If the people who have this information are misusing it, that's where we need to intervene so that if I, as a juvenile probation officer, am not respecting the confidentiality rights of a delinquent, then you hold me accountable for misuse of that information, but you don't stop me from collecting that information or sharing that information with people who can make better decisions and take more appropriate action because they have [the information].

That would be the same thing with people in our crime lab. If, for some reason, their procedures are such that they allow people to access information that they shouldn't have, then hold them accountable for violating their protocols and violating those rights. That would be an answer, rather than to deprive the justice system of the use of a valuable tool that helps solve crimes and keep the communities safe.

Number 2379

MR. BUTTCANE concluded:

If we were to enact this bill, we would anticipate that there would be approximately 200 or so more DNA samples that we would submit to the state crime lab for adjudicated delinquents who have committed the crime of burglary. We have a system in place that would allow us to do that without any programmatic or fiscal impact on our system.

The sampling is a very simple mouth-swab test. It's taken by our field probation officers as well as our youth facility staff. It's sealed and then sent off to the crime lab, where it's classified, recorded, and so on. It's a simple and effective process. And,

again, the department supports this committee substitute.

REPRESENTATIVE JAMES said she believes there could be some deterrent, especially for young folks, although some people become calloused very early. She asked Mr. Buttane, if he were in charge of a juvenile who had given a DNA sample, whether the process would include making it clear to the young person what kind of evidence was being left behind and what the future could hold if that person got into some other "bad trouble."

MR. BUTTANE answered:

Yes. We do that now, with juvenile disclosure. ... Not all cases are automatically subject to mandatory public disclosure. But in our discussions of those offenses that are not subject to mandatory disclosure, we talk about, "Your next offense will trigger a series of events which could subject you to being published in the newspaper."

For kids who are on kind of that moral boundary, that does help them stay within the boundaries sometimes, explaining that to a young person who has committed a burglary, to say, "You know, you've got a chance: you can choose to walk this way or that way, but if you walk this way, everything will be fine and taking your DNA really won't matter down the road, but it is on file, so that if you walk the other way, it will make it easier for us to find you and hold you accountable." So communicating that message to them, I think, has some value.

REPRESENTATIVE JAMES mentioned that she had cared for foster children in Oregon, Washington, and Alaska. One girl had come from the Hillcrest School for girls, she noted, which had provided Representative James with a full file on the student.

TAPE 01-57, SIDE B
Number 2472

REPRESENTATIVE COGHILL turned to the issue of security and noted that "there are three things: crime labs and the types of information that you might get from DNA, the security, and what would be the liability from misuse." He requested that Mr. Smith speak to that.

MR. SMITH pointed out that the samples were initially blood samples stored in secure, cold/frozen storage. Only those within the DNA program have access to those samples. The samples are brought in and stored, and a barcode is established. However, the DNA sample remains, "which presumably could ultimately do all the things that some folks have indicated," he said. Currently, doing anything other than what the law says is a misdemeanor. Mr. Smith said he was not aware of any problems nationally or locally within the state. However, he emphasized the importance of holding [the sample] secure and preventing anyone from accessing it except for the intended purposes.

CHAIR ROKEBERG asked if juveniles who have been adjudicated delinquent are fingerprinted.

MR. BUTTCANE answered that the law allows juveniles to be fingerprinted in the same manner in which adults are fingerprinted. However, there is not the capacity to fingerprint every juvenile delinquent, although "we" do attempt to fingerprint those juveniles who have been adjudicated delinquent through a formal court process as well as those booked in youth facilities for any offense. Therefore, he estimated that 30-40 percent of [Alaska's] youth are being fingerprinted. Mr. Buttane agreed with Chair Rokeberg that there is no statutory or legal restriction.

Number 2328

CHAIR ROKEBERG pointed out that there is a proposed CS labeled 22-LS0234\F, Luckhaupt, 3/14/01. He requested that Representative Murkowski review the changes encompassed in it.

REPRESENTATIVE MURKOWSKI explained that a letter from the Alaska Civil Liberties Union (AkCLU) mentions the expansion that HB 143 allows, including allowing law enforcement to demand DNA samples related to a missing person "if law enforcement articulates even a remote possibility." She explained that a section of the original bill has been deleted in the proposed CS because it referred to the ability to identify missing persons. She related her understanding that Alaska doesn't have the capability to do it and thus it didn't make sense to include such language in the legislation.

MR. SMITH noted the belief that there is a national effort to allow [DNA from] missing persons to be put into the database. Therefore, he thought Alaska needed legislation to do so. However, since HB 143 has been drafted, the Federal Bureau of

Investigations (FBI) is creating that and will voluntarily let people be put into the database. The FBI will maintain [a national database] and thus it is not necessary to do it in the DNA registry. Mr. Smith related his understanding that [this national registry] would be similar to "reverse paternity." In other words, a [parent] with a missing child could have a DNA sample taken and placed in the database. Then the DNA would be run against the remains and such that are otherwise unidentifiable.

Number 2196

REPRESENTATIVE JAMES moved to adopt CSHB 143, version 22-LS0234\F, Luckhaupt, 3/14/01, as the working document before the committee. There being no objection, Version F was before the committee.

Number 2189

REPRESENTATIVE MEYER moved to report CSHB 143, version 22-LS0234\F, Luckhaupt, 3/14/01, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 143(JUD) was reported from the House Judiciary Standing Committee.

The committee took a brief at-ease from 2:10 p.m. to 2:13 p.m.

HB 121 - CHARITABLE GIFT ANNUITIES

Number 2180

CHAIR ROKEBERG announced that the next order of business before the committee would be HOUSE BILL NO. 121, "An Act relating to the issuance of qualified charitable gift annuities." Chair Rokeberg noted that before the committee was CSHB 121(L&C).

Number 2173

REPRESENTATIVE LISA MURKOWSKI, Alaska State Legislature, testified as the sponsor of HB 121. Representative Murkowski explained that a charitable gift annuity is essentially a contractual agreement between a charity and an individual. The charitable annuity guarantees a monthly payment and allows a tax deduction. This legislation establishes a notice system to the Division of Insurance that a qualified charitable annuity is present and has accepted these annuities. This legislation

defines and clarifies what a gift annuity is and specified that a charitable gift annuity is not insurance.

REPRESENTATIVE MURKOWSKI emphasized that this is not covered through any form of insurance through the state. Furthermore, the Division of Insurance is not regulating this and thus the donor should realize that there really is no regulation over this because it is purely a notice requirement. However, this legislation lets the consumer know that a particular charity is a legitimate charity. She pointed out that the charity must meet the specified minimum cash requirements as well as a minimum operation time.

REPRESENTATIVE MURKOWSKI referred to the committee packet, which should include a brochure from the National Heritage Foundation that walks one through the process of a charitable gift annuity. She informed the committee that there are only a few established charitable gift annuities. She indicated that the Providence Foundation will explain how the process works for them. The legislation before the committee is adapted from a National Association of Insurance Commissioners (NAIC) model, which has been adopted in 30 states. She pointed out that this is purely a notification process to the division and is not a regulation of the charities.

REPRESENTATIVE JAMES related her understanding that if she qualified under this legislation to give \$100,000 to a qualified charity, then she would receive a monthly amount. She asked whether the money she received would be taxable.

REPRESENTATIVE MURKOWSKI answered that it would be tax-deductible to a point; however, she was not certain what "that point" was. Representative Murkowski explained that the advantage to the donor is twofold in that it allows one to make a charitable donation for which the individual receives a deduction as well as allowing a revenue stream from the investment at a rate set by actuarial standards.

Number 1858

JEROME SELBY, Providence Health System in Alaska, testified via teleconference. Mr. Selby informed the committee that Providence Health System requested HB 121. He explained that Providence is one of the few organizations that is doing the planned giving program. [Providence Health System in Alaska] is a participant in the national effort on planned giving. The NAIC model was developed in order to handle this fairly

uniformly across the country. Therefore, [Providence Health System in Alaska] requested that the legislature take this up to put it on the record as well as to make it clear for the Division of Insurance and the individual. From Mr. Selby's perspective, this legislation provides a good test such that folks notify the state that they are going to be in this business. Therefore, people can check with the state regarding the existence of an organization. This legislation doesn't really change anything that Providence is doing, since it already has been following what is in the bill. However, the bill does level the playing field for everyone. Mr. Selby informed the committee that the other folks doing planned giving programs in the state have been contacted and have given unanimous support for HB 121.

Number 1725

JON CALDER, Director, Annual & Planned Giving, Providence Alaska Foundation, testified via teleconference. Mr. Calder echoed earlier testimony that this is a good bill to support the charitable efforts in Anchorage and Alaska. This legislation defines and clarifies what a gift annuity is such that it assures the Division of Insurance that it is not commercial insurance. The passage of this bill in over 30 states has provided a good track record. Mr. Calder echoed Representative Murkowski's testimony regarding the minimum requirements for a gift annuity and the notice that donors are given regarding the fact that this is not under insurance laws.

REPRESENTATIVE JAMES requested that Mr. Calder explain the benefit to the giver in this process.

MR. CALDER explained that [gift annuities] came into being almost 100 years ago; a gift annuity essentially allows the donor to make a gift while guaranteeing a lifetime income to the donor. Therefore, the donor can make a meaningful gift while providing the security of lifetime income. Practically speaking, the donor also receives a charitable deduction that is based on the actuarial table given by the National Committee on Gift Annuity. Furthermore, the donor receives partial tax-free income.

MR. CALDER, in response to Representative James, spoke to the relationship between the amount of cash given by the donor and the amount returned to the donor. The relationship is calculated on the rate established by the National Committee on Gift Annuities. He explained that the amount from the donor is

based on age in that the higher the age, the greater the rate the person receives. On the average, the charitable deduction would amount to about half of the gift. Therefore, a \$10,000 gift would result in about \$4,000 to \$5,000. For example if the person is getting \$2,000 a year back, the person - again based on age - is likely to get back more than 50 percent that is going to be partially tax-free income. However, he pointed out that the relationship for a younger donor would be different.

CHAIR ROKEBERG asked if the tax-free income would be the return on principal due to the donor's age.

MR. CALDER explained that partially tax-free income is received because a gift annuity is basically part gift and part return of income. He noted that this is all governed by Internal Revenue Service (IRS) regulations. However, because a charitable gift annuity is part gift, the person is able to have income that is partially tax-free. Therefore, the donor would receive credit for the gift as well as income.

Number 1420

CHAIR ROKEBERG surmised, then, that a donor could receive a higher percentage return on the investment if the imputed rate return of tax savings were calculated into it. Chair Rokeberg said that it could be viewed as doing good works and receiving partially tax exempt bond money back.

MR. CALDER agreed and reiterated that a good portion of the money the donor receives will be tax-free.

REPRESENTATIVE JAMES related her understanding that a charitable gift annuity is a better deal for the receiver and thus the donor would want to do it because it is a good enough deal that the donor would want to give the money.

MR. CALDER agreed. Although the tax benefits are there, a donor most often gives to a charity because the donor believes in what the charity does. A gift annuity came into being because it allowed an individual to give a meaningful gift while helping the donor by providing guaranteed income. Therefore, the tax benefits are not the primary reason an individual would make the gift.

Number 1286

GLORIA GLOVER, Chief Financial Examiner, Anchorage Field Office, Division of Insurance, Department of Community & Economic Development (DCED), testified via teleconference. Ms. Glover noted [DCED's] support of CSHB 121[(L&C)]. She said that [the division] will maintain a list in order to respond to public requests for information regarding who is on the list. This legislation does provide some enforcement if the donors are not provided the notice required by this legislation. However, she didn't see that [the division] is regulating these products or these entities, which is reflected in the zero fiscal note.

CHAIR ROKEBERG inquired as to why the Division of Insurance has oversight rather than the Division of Banking, Securities & Corporations.

MS. GLOVER answered that there is some overlap. However, she pointed out that the Division of Insurance statute includes the definition of annuity. Ms. Glover related her understanding that currently annuities are under the jurisdiction of the Division of Insurance. In further response to Chair Rokeberg, Ms. Glover agreed that the Division of Insurance is responsible for annuity oversight in general.

CHAIR ROKEBERG pointed out that annuities are usually used by insurance companies as a marketing tool for investment for their clients. Furthermore, annuities are based on actuarial life expectancy.

MS. GLOVER agreed.

Number 1177

CHAIR ROKEBERG closed the public testimony on HB 121.

REPRESENTATIVE COGHILL asked if the House Labor and Commerce Standing Committee had discussed the annuity notification for an insolvency due to bad management.

REPRESENTATIVE MURKOWSKI pointed out that there is a minimum cash requirement of \$300,000 in assets of the charity, which is essentially the backup to the guaranteed annuity.

REPRESENTATIVE COGHILL related his understanding that most things would be specified in the contract. He asked if there would be notification if [the entity] falls below the limit. He surmised that "we" are not regulating these [gift annuities].

REPRESENTATIVE MURKOWSKI agreed.

CHAIR ROKEBERG directed attention to the bill, which says that these are not regulated by the state and that the consumer is informed of such in the contract.

Number 1055

REPRESENTATIVE MEYER moved to report CSHB 121(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 121(L&C) was reported from the House Judiciary Standing Committee.

The committee took a brief at-ease from 2:34 p.m. to 2:38 p.m.

HB 125 - UNLAWFUL VIEWING

Number 1042

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 125, "An Act relating to unlawful and indecent viewing and photography and to civil damages and penalties for that viewing and photography."

Number 1015

DENISE HENDERSON, Staff to Representative Pete Kott, Alaska State Legislature, presented HB 125 on behalf of Representative Kott, the sponsor. She explained that HB 125 will ban the practice commonly known as "up-skirting or down-blousing," and will amend AS 09.68 by creating a special civil damage provision that will benefit people who have been unlawfully viewed or photographed. She added that HB 125 creates a new crime that will make it illegal to surreptitiously view or photograph someone in the interior of a room without that person's consent. This crime would be a class A misdemeanor. She also said that HB 125 amends the existing crime of indecent viewing by including the viewing of undergarments as well as unclothed body parts.

MS. HENDERSON remarked that the modern technology of the Internet has led to the practice of web sites' posting and buying pictures from "high-tech peeping Toms," and telling people where they can buy the type of equipment needed in order to take these types of pictures themselves. She added that web sites promote and encourage this [behavior]. Ms. Henderson explained that HB 125 will not only protect the privacy of

Alaskans, but will also prohibit the perpetrators of these types of crimes from realizing any type of monetary gain.

MS. HENDERSON, in response to questions, confirmed that HB 125 both creates a civil cause of action [by amending AS 09.68 through the addition of a new section] and expands the misdemeanor provision in current statute - AS 11.61. She added that [HB 125's change to AS 09.68] will allow for civil damages to be pursued.

REPRESENTATIVE MEYER inquired whether HB 125 would allow a person to take a picture of someone wearing a swimsuit.

MS. HENDERSON explained it would depend on the circumstances; if a person were outside someone's home and took a picture of an individual while he/she was inside, she opined that HB 125 would apply because the person inside his/her home has a right to privacy and the photography would be occurring without that person's consent or knowledge. If, however, the person taking the picture is someone who has been invited into the home - for example, at a hot-tub party - and the subject of the photography knows that the picture is being taken, then HB 125 would not apply and those pictures could be displayed on a web site. In the latter example, she added, the subject of the photography has the opportunity to tell the person taking the pictures not to display them on the Internet.

REPRESENTATIVE COGHILL, with regard to Section 2, asked whether it is necessary to use the word "surreptitiously", and if so, whether the meaning would be clear enough.

REPRESENTATIVE JAMES responded that it is a word with clear meaning, and that it well defines the topics being discussed.

Number 0596

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), testified via teleconference and said her organization has a number of concerns with HB 125. She noted that when it becomes a crime to take pictures of someone who is actually clothed - albeit skimpy clothing - serious free speech, First Amendment, and Alaska constitutional free speech concerns are raised. Also, with regard to the expansion in Section 4 of the definition of what a picture is, she noted that "image" can refer to a computer-generated image that does not actually involve the use of any human subject, but merely looks like a human being. She cautioned the committee that HB 125 might be

premature; the U.S. Supreme Court is going to hear a case in October that asks this very question - whether it is unconstitutional to prohibit the viewing of a computer-generated image that doesn't involve the use of any human subject. She suggested that the committee might wish to delay any action regarding HB 125 so as not to fly in the face of next year's U.S. Supreme Court decision.

MS. HENDERSON relayed that Detective Klinkhart - who works in the sex crime division, which deals with a lot of child pornography - is very supportive of HB 125. She added that Alaska is experiencing the problem of pornographic pictures [of children] being sold on the Internet. She offered that Section 3 of HB 125 details how a person commits the crime of indecent viewing or photography: "if, in the state of Alaska, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person". She explained that ", or the undergarments of the person covering the genitals, anus, or female breast," has been added to the definition because of incidents wherein cameras have been placed in girls'/women's locker rooms and video tapes have been made of girls/women in various states of undress. She confirmed in response to questions that in these cases, current statute did not allow for prosecution because there was not any real nudity shown, simply views of girls/women in their undergarments.

MS. HENDERSON pointed out that although these types of crimes are already addressed in statute, a further effect of HB 125 is to set a precedent so that people do not have the opportunity to have any type of monetary gain from these types of crimes. It has become too easy to go onto various web sites and sell photographs, she opined, and the sponsor of HB 125 wishes to ensure that there is some type of civil provision set up so that people don't have to suffer while others gain monetarily from this type of behavior.

Number 0207

ROBERT BUTTCANE, Legislative & Administrative Liaison, Division of Juvenile Justice, Department of Health & Social Services (DHSS), said that [the DHSS] has some concerns with HB 125. As a juvenile probation officer responsible for deciding whether a police report contains probable cause to proceed on taking action against a juvenile offender, he explained that "we" might have problems with the word "surreptitiously" as it is used in HB 125. While there is a legal definition for that word in Black's Law Dictionary, he continued, in circumstance it might

be difficult to really separate out the criminals from the non-criminals. He presented the following scenario:

I am in someone's living room and I am trying to seek a photograph of the facial surprise of someone opening a present. They might not know that I am actually snapping the picture, and not even know that I took the picture until I e-mail it to someone a few days later and say, "Wasn't that neat that Jane got this present?"

MR. BUTTCANE continued by saying that the way HB 125 is written, while this scenario might not result in prosecution, it might be investigated if the subject of the picture was annoyed that his/her photograph was taken. He also pointed out the DHSS engages in a number of activities in which people are photographed as a routine course of business. For example, when people are admitted to the Alaska Psychiatric Institute (API), they are photographed so that the DHSS can ensure that medical records contain a picture of the patient, in order that the correct medication can be administered to the right person. He added that those people are not always voluntarily giving [the DHSS] permission to take those pictures, and sometimes - if, for example, patients entering a medical facility are in a comatose state - they are not even aware that the photograph has been taken. These pictures are being taken and circulated among people who have to have access to that photograph in their normal course of business.

MR. BUTTCANE noted that HB 125 does exclude some specific uses of photographs - for security surveillance, for law enforcement - but it does not provide explicit exclusions for the normal course of business in health care professions, hospitals, or juvenile corrections facilities. He suggested that HB 125 could be amended to add this type of exclusion so that there wouldn't be any question that people doing their job would not be subject to [prosecution or investigation].

TAPE 01-58, SIDE A
Number 0009

CHAIR ROKEBERG suggested to Mr. Buttcané that he have the attorney general draft an amendment that would meet these concerns. Chair Rokeberg then asked whether the sponsor is endeavoring to address all incidents of photography if it is surreptitious or unknown by the subject to have taken place.

MS. HENDERSON said yes.

CHAIR ROKEBERG followed up by asking if this is true regardless of the activity of the subjects, such as a birthday party, for example.

MS. HENDERSON said no, not in those types of situations. She added that she is willing to entertain any motion, on behalf of the sponsor, that will clarify this. She confirmed that Section 2 of HB 125 is addressing a new crime - improper viewing or photography - and the intention of the sponsor is to make it a crime for a person to photograph someone in any type of position without his/her knowledge. She added that this activity is an infringement of privacy.

REPRESENTATIVE JAMES noted that it is getting pretty broad to make photographing candid shots of people a crime.

CHAIR ROKEBERG offered that he interprets HB 125 as saying "a photographer can take pictures out on the street without you knowing it, but if you're in the room, he can't do it."

MS. HENDERSON said no. She offered the interpretation that if someone were in his/her own home, HB 125 would apply, but if a person were out in public, he/she could not have the same expectation of privacy.

REPRESENTATIVE JAMES pointed out that the language in HB 125 simply refers to "a room" but does not specify someone's home.

Number 0309

REPRESENTATIVE COGHILL, with regard to the practical application of Section 2 of HB 125, said he thinks the intention is the same as is specified in Section 3, and that it should perhaps be referenced in that first paragraph [of Section 2], lines 8-9. Otherwise, it's going to be wide open, he added.

CHAIR ROKEBERG asked whether [Section 2] is intended to include any type of a pornographic situation.

MS. HENDERSON replied yes.

REPRESENTATIVE JAMES noted that the language doesn't say that.

CHAIR ROKEBERG agreed.

REPRESENTATIVE MEYER commented that Mr. Buttane brought forth some good points; sometimes a person will take pictures that the people don't know about, such as in those situations detailed by Mr. Buttane.

CHAIR ROKEBERG granted that subsection (e) of Section 2 does make reference to the meaning of picture as defined in AS 11.61.123, but noted that this did not help clarify the overall intent of Section 2.

REPRESENTATIVE MEYER remarked that he thinks HB 125 is a good bill - that the intent of it good - but he added that he also thinks a committee substitute (CS) needs to be created that will address the concerns brought forth.

CHAIR ROKEBERG agreed and said he is attempting to "zero in" on specific language.

Number 0465

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers (AST), Department of Public Safety (DPS), testified via teleconference and said that in general, the DPS supports HB 125. He explained that HB 125 tightens up a net of illegal activity where [AS 11.61.123] falls a little bit short. He said that although AS 11.61.123 covers some good topics, it principally is focused on viewing and photography of a sexual nature. By contrast, AS 11.61.121 - the new statute proposed by HB 125 - will cover all viewing or photographing of people in private places if it occurs without their knowledge and consent, whether the context is sexual or the subjects are nude or the subjects are simply going about their everyday business. He surmised that the sponsor's intent is to prevent people from taking pictures of other people doing ordinary things in private places that can then be sold on the Internet. He presented the scenario wherein someone takes a picture of a person and then links the face of that person with the image of whatever body parts the photographer wants, in order to sell the end result on the Internet.

LIEUTENANT DUNNAGAN said he thinks HB 125 contains some good exceptions, and he agreed that a few more could be added as suggested by Mr. Buttane. He opined that [AS 11.61.121] specifically addresses all photographs that are taken of people without their consent in private places. He acknowledged that someone can take a picture of people on the street corner because they have no expectation of privacy there. But when

people get into their homes or the bathroom at the Chevron station or any other place, and they close the door and are by themselves or with the people that they choose to be with, then these people do have an expectation of privacy from outside viewers. He opined that these are the types of situations that HB 125 is trying to cover.

Number 0644

LIEUTENANT DUNNAGAN, in response to questions, relayed that there was a case in Big Lake a few years ago wherein the owner of an apartment building had placed a sophisticated monitoring system with pinhole cameras in several rooms in the apartments; the perpetrator also had installed false walls and hidden corridors to enable him to view residents in their apartments. Lieutenant Dunnagan surmised that HB 125 would cover this kind of behavior, especially if the perpetrator is taking pictures and viewing everyday normal activities when the occupants are fully dressed and not doing anything that "we" normally think of regarding the term "indecent viewing," such as taking showers or changing clothes.

REPRESENTATIVE COGHILL, on the topic of private places, asked whether the term "interior of a room" would provide "an escape hatch" for someone's defense; he then listed the examples of a swimming pool and a hot tub as not falling into the category of being in the interior of a room.

LIEUTENANT DUNNAGAN replied that it certainly could be. For example, [an enclosed] hot tub in one's backyard might not necessarily be in a room but would be in the curtilage of one's home and would be protected against certain things. However, if the perpetrator is on the other [side of a] draw on the mountain or a hill overlooking somebody's backyard and is watching and taking pictures of a hot tub party, then HB 125, the way it is written, wouldn't cover that situation because the subjects would be outside.

CHAIR ROKEBERG noted that a lot of businesses, as a matter of course, have their own business surveillance cameras that are not necessarily security surveillance, which is provided for in [subsection (d)(1), of Section 2]. And he surmised that most employees would be aware, via their employment contract, when they were under surveillance simply during the course of everyday business.

LIEUTENANT DUNNAGAN said that both of Chair Rokeberg's comments are correct. There are all kinds of different monitoring systems out there, he explained, and most businesses use them for some kind of security. For example, it could be to help law enforcement make an apprehension after a robbery; to monitor what goes on in the parking lot, because there are a lot of car-related problems; or to monitor inside a store for shoplifting or to prevent unauthorized access to certain areas. He added that in the latter example, the employees are definitely aware that that sort of monitoring is taking place. He also pointed out that most people know that monitoring occurs in stores and are not surprised to see their faces on the monitor behind the counters of 7-11 stores, for example.

Number 0867

JERRY LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, speaking as the drafter, explained that he had used the word "surreptitiously" in Section 2 because he felt he needed to cover the situation when someone is innocently walking down the street, looks off to the right, happens to look through a window, and sees someone inside the house; that subject would be in the interior of a room, but that viewing would not be conducted in a manner that anyone would see as being unreasonable in any way. So, by inserting the word "surreptitiously", the application of this law would be limited to situations in which someone is doing the viewing or the photography in a way that is sneaky and hidden: it's done in such a way that the subject is unaware that the observation is occurring and hence is unable to stop it, as opposed to a situation in which the camera is visible. For example, if someone walks into a person's office with a camera, that person can see that it is occurring and can take steps to stop it. Or if it is obvious that someone is outside looking in, the subject can close the blinds or curtains. But if the subject does not know that someone is outside looking in, because he/she is hidden, the subject can't stop that activity from occurring because the subject doesn't know about it.

MR. LUCKHAUPT explained that HB 125 is designed to provide a criminal penalty for those instances when someone is [viewing or photographing a subject] in a manner that would not normally be expected to occur, and when the subject has a reasonable expectation of privacy, for example, when he/she is in a room instead of being outside. He suggested that using the word "surreptitiously" is a way to narrow the reach of HB 125 because

[otherwise] it could be applied indiscriminately to all kinds of conduct when a person happens to observe a subject who feels that he/she deserves some privacy.

CHAIR ROKEBERG noted that questions and concerns have been raised regarding the use of the phrase "in the interior of a room". He brought up the point that someone could be inside his/her home in the hallway and it would not be considered "in a room." Chair Rokeberg asked Mr. Luckhaupt whether expanding the interior-of-a-room concept to include "or a place where one would have a legal expectation of privacy" would be too broad, and whether it would then become more of a subjective argument. He acknowledged that Mr. Luckhaupt, as the drafter, was trying to limit the application.

Number 1078

MR. LUCKHAUPT agreed that he was seeking to limit the reach of Section 2, and he noted that he had started out using the concept of the interior of some structure - some building, or a residence - but he had not wanted to limit the application just to residences, because there is the expectation of privacy in places of business as well. With regard to the term "curtilage" used by Lieutenant Dunnagan, he noted that it includes the yard and all the areas of a person's real estate - an area that is bounded by a fence. He explained, however, that should it be, for example, a picket fence or - as is the case with the Capitol Building - simply an open area, then an expectation of privacy is not reasonable.

REPRESENTATIVE COGHILL mentioned a reluctance to exempt professional journalists from Section 2 when they are engaging in surreptitious behavior.

MR. LUCKHAUPT, in response to the suggestion to use the term "in the structure of a home", said he did not want to limit the application of Section 2 just to structures. He added that some of the cases that people have gotten upset about involved businesses wherein someone has been observed, not necessarily by the owner of the business, but by someone else via a hidden camera who has watched and photographed the subject do everyday actions such as picking his/her nose, and then later the pictures were placed on the Internet.

CHAIR ROKEBERG suggested that businesses should be exempted from Section 2. He used the example of a business that legitimately monitors its holdings but then later someone else gets a hold of

the tape/photographs and uses them to the subject's detriment; he said that the original viewing/taping/photographing should be legal, while misuse of the end product should be punishable.

MR. LUCKHAUPT explained that the misuse of the photograph may be illegal under Section 2, but the business owner is going to be exempt under [Section 2, subsection (d)(1)] page 2, lines 19-23, which is the same language used in the indecent viewing statute sponsored by Representative Mackie in response to a Klawock incident.

Number 1285

CHAIR ROKEBERG opined that this language did not go far enough because it pertained strictly to incidents with a sexual context. He added that he thinks the language in Section 2 should be expanded to exempt business operations that use surveillance cameras to monitor for performance, not just for security reasons. He said that employees should not have an expectation of privacy, and they also should be notified, via contract, that this is the case. He noted, however, that there is no statutory requirement for notice of surveillance, "just like eavesdropping on the phone call of an employee is legal." As much as "we" love privacy rights, he added, the employer has the right to monitor the productivity of staff.

REPRESENTATIVE COGHILL noted that there are places where it would not be appropriate for an employer to monitor staff, such as in bathrooms, dressing rooms, or changing rooms; therefore, he did not want to make that sort of allowance for employers.

CHAIR ROKEBERG mentioned the word "surreptitiously." He added that "that type of conduct needs to be exempt from this," and said he did not agree with the drafter that the language in [subsection] (d)(1) goes far enough.

MR. LUCKHAUPT explained that the language in [subsection (d)(1)] had originally been arrived at in response to the incident in Klawock.

CHAIR ROKEBERG countered that this language, at the time of its adoption, pertained to viewing nude women, which is one of the reasons that there is "an undergarment clause" in HB 125.

MR. LUCKHAUPT acknowledged that the "private exposure of the genitals, anus, or female breast" could occur in changing rooms, fitting rooms, and bathrooms, and that the only way [monitoring

could be done] is for crime prevention purposes or other security purposes. So to the extent that a business owner is concerned about theft by employees [this monitoring could occur].

CHAIR ROKEBERG countered that the new [AS 11.61. 121, in Section 2] refers to people who have clothes on, generally speaking.

Number 1414

MR. LUCKHAUPT responded:

I guess it would apply to the use of "surreptitiously"; ... I thought long and hard about coming up with a way to insert something that made this criminal statute a little harder to apply and ... protected that innocent conduct. If it's truly innocent, it isn't surreptitious. If it's with notice to the person, I am not sure that it's surreptitious at that point anymore.

CHAIR ROKEBERG said he agreed but added that he was concerned about potential lawsuits unless the committee could come up with a draft that [demarcates] that area strongly enough.

REPRESENTATIVE COGHILL reminded members that [Section 2] refers to a class A misdemeanor, and he questioned how far "we" are going to go to "pursue a class A misdemeanor."

CHAIR ROKEBERG opined that if something is going to be listed as a criminal activity, then [the statute] should specify what constitutes the crime.

MR. LUCKHAUPT added that in addition to the class A misdemeanor, Section 1 provides for civil penalties.

CHAIR ROKEBERG, in an effort to assist with the drafting of a committee substitute, suggested expanding the [language in Section 2] to include "the interior of a room or home".

MR. LUCKHAUPT offered to just leave it at "peoples' residences". With regard to including business premises, he added, the committee could make that choice. People are entitled to more protection and to have a higher expectation of privacy in their own homes, however; so if the committee chose to make that the demarcation, it would not be unreasonable. There is still the protection against the private exposure of genitals, he added.

CHAIR ROKEBERG opined that the sponsor is concerned with the publication and broadcasting of pictures, even those legally obtained.

MR. LUCKHAUPT noted that the taking of a legally obtained tape would constitute a theft, which could be prosecuted under current statute. He also noted that a person could pursue the civil penalties provided for in HB 125 even if there is not a criminal charge filed. He added that the civil penalties provided for are substantial and will act to provide a disincentive for engaging in this kind of conduct.

Number 1586

CHAIR ROKEBERG, with regard to the drafting of a committee substitute, said:

We need to look at the definition of the home - or that scope - where we have the expectation of privacies; I'd like to see something specific here about businesses performing their business; and then Mr. Buttane brought up some concerns about the agencies and their day-to-day operation, some [of which] might be construed to fall under this. Plus, I am concerned about this whole issue of the rebroadcast being the actual crime and not the taking of the pictures, which I think meets the sponsor's intent
....

CHAIR ROKEBERG then asked for clarification on this latter point.

MS. HENDERSON indicated that the sponsor did intend for the taking of the picture, as well as the rebroadcast of it, to be included as a crime in HB 125.

CHAIR ROKEBERG asked where in HB 125 there is language regarding rebroadcast.

MR. BUTTCANE noted that Section 1 contains the language pertaining to transmittal.

CHAIR ROKEBERG surmised, then, that only the civil provisions of HB 125 could address the "downstream" aspect of this crime.

Number 1726

MR. LUCKHAUPT noted that this is his intent with drafting HB 125 in this fashion. "It comes up a lot as to how far down we provide the criminal penalty," he added. If the initial picture was taken legally and then stolen, he asked do we then impose criminal conduct for the person that acquires the tape - maybe through five or six different people down the line - and then broadcasts it? He noted that in this example it would be easier to impose a civil liability rather than a criminal liability on a person who may not be aware that this picture was not taken with the consent of the subject. It becomes very hard to have a successful criminal prosecution at that point. He said he was trying to stop the criminal liability at some reasonable point, and he'd chosen it to be with the person who is doing the viewing or taking the picture, and then letting the civil proceeding sort everything else out.

REPRESENTATIVE COGHILL said he'd struggled with it because he has been surreptitiously viewing people in his job as a teacher, as a matter of course, for years; he said he oftentimes would surreptitiously watch his substitute teachers and other people as they interact with children at the school. He added that had anyone ever "got crossways" and wanted to sue him for this activity, he would have been in trouble. He noted that although he did this as a matter of safety, it could be argued that it wasn't.

CHAIR ROKEBERG said he thinks that this is entirely proper conduct, and that a lot of the business community - in both public and private sectors - also have the legitimate right to oversee people and their activities.

MR. LUCKHAUPT, on the example given by Representative Coghill, said that observing a person in the school simply by standing in the public hall off to the side of the doorway would not be considered surreptitious as compared to using a peephole designed for that purpose, which might be, and maybe should be, subject to some sort of liability. He added that it is all going to depend on the quality of how the person undertakes the viewing, for example, if that person is doing it from the bushes - like a peeping Tom - and observing someone inside who can't protect himself/herself from that. He noted that Alaska does not currently have a peeping Tom statute; HB 125 could become the peeping Tom statute, he added.

REPRESENTATIVE COGHILL suggested that the phrase "with the expectation of privacy" should be incorporated into [subsection

(a) of Section 2], because there are going to be times when a person is going to be in a room that he/she expects will be private, and there will be times when that expectation won't be present. And if a person has made reasonable efforts to be private, he opined, then that person should have [the protection of that privacy].

Number 1947

MR. LUCKHAUPT reminded [the committee] that the phrase "expectation of privacy" is rather nebulous and has different meanings to different people; he said he would try to create something in a committee substitute that will reflect what a reasonable person would expect, which is often done in criminal law as well as in a civil context. He noted, however, that when possible, [drafters] try to get a little more definition in place when something pertains to the criminal area; this is why he'd used the terms "in a room" and "surreptitious" to try to express the concept that someone observed under those circumstances does have an expectation of privacy. Mr. Luckhaupt spoke at length on the topic of drug tests for employees as it pertained to the expectation of privacy, and then said he would try to craft appropriate language according to the committee's instructions.

CHAIR ROKEBERG reiterated his suggestions for a committee substitute.

REPRESENTATIVE COGHILL asked whether "image," under the definition of "picture" in Section 4 applied only to actual people or also applied to manufactured images of people.

MR. LUCKHAUPT said that the definition of "image," which will also apply to the existing law regarding indecent viewing, is intended to apply to representations that are now being created in different ways.

CHAIR ROKEBERG commented that perhaps a definition of "undergarments" might be in order so that it is clear that it excludes T-shirts.

REPRESENTATIVE COGHILL, on a possible amendment, suggested that [subsection (d)(2)], pertaining to journalists, be tied to the "journalists code."

CHAIR ROKEBERG announced that HB 125 would be held over.

HB 196 - RIGHT OF ACTION FOR LEGAL SEPARATION

Number 2222

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 196, "An Act establishing a right of action for a legal separation; and amending Rule 42(a), Alaska Rules of Civil Procedure." [With the reading of the title, HB 196 was held over.]

ADJOURNMENT

Number 2238

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:35 p.m.